



40 CFR Part 49

[EPA-R01-OAR-2022-0961, FRL-10562-02-R1]

Approval and Promulgation of Air Quality Implementation Plan; Mohegan Tribe of Indians of Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving amendments to the Mohegan Tribe of Indians of Connecticut (the Mohegan Tribe, Mohegans, or the Tribe) Tribal Implementation Plan (TIP) under the Clean Air Act (CAA) to regulate air pollution within the exterior boundaries of the Tribe's reservation. EPA approved the Tribe for treatment in the same manner as a State (Treatment as State or TAS) for purposes of administering New Source Review (NSR) under the CAA on December 26, 2006. The TIP revisions we are approving include permitting requirements for minor sources of air pollution not covered by the Tribe's existing federally approved NSR permitting program. The purpose of the TIP revisions is to enable the Tribe to attain and maintain the National Ambient Air Quality Standards (NAAQS) within the exterior boundaries of its reservation by establishing new elements to its federally enforceable preconstruction air permitting program.

DATES: This rule is effective on [Insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2022-0961. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, i.e., confidential business information (CBI) or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Madeline Isenberg, Air Permits, Toxics, and Indoor Programs Branch, EPA Region 1, 5 Post Office Square (Mail Code: MI-5), Boston, MA, 02109-3912, telephone number (617) 918-1271, email: Isenberg.Madeline@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

On February 13, 2023 (88 FR 2298), EPA published a notice of proposed rulemaking (NPRM) for TIP revisions submitted by the Mohegan Tribe of Indians of Connecticut for approval under section 110 of the CAA. The TIP revisions address attainment and maintenance of the NAAQS within the exterior boundaries of its reservation by establishing new elements to its federally enforceable preconstruction air permitting program.

The Mohegan Tribe of Indians of Connecticut is an Indian Tribe federally recognized on March 7, 1994, by congressional legislation (Pub. L. 103-377, October 19, 1994.). The Secretary of the Interior recognizes the “Mohegan Tribe of Connecticut” (86 FR 7554, January 29, 2021). On May 4, 2005, the Mohegan Tribe of Indians of Connecticut submitted a request that we find the Tribe eligible for TAS pursuant to section 301(d)(2) of the CAA and title 42, part 49 of the Code of Federal Regulations (CFR), for the purpose of implementing its CAA permitting program. The Mohegans also submitted for EPA approval its TIP on May 4, 2005.

The Tribe requested a TAS eligibility determination pursuant to the CAA and the Tribal Authority Rule (“TAR”) for the purpose of administering its TIP within reservation lands. The operative portion of the Mohegan TIP was the Tribe’s Area Wide NOx Emission Limitation Regulation.

The Tribe formally submitted the applicable elements of its TIP revision to EPA Region 1 on July 28, 2022.

The rationale for EPA's proposed approval of the Mohegan TIP is explained in the NPRM and will not be restated here. No adverse public comments were received on the NPRM.

II. Response to Comments

EPA received one comment during the comment period, which supported EPA’s proposed action. As such, this comment does not require further response to finalize the action as proposed. The comment is available in the docket for this action

III. Final Action

EPA is approving the Mohegan TIP revisions under the Clean Air Act to regulate air pollution within the exterior boundaries of the Tribe’s reservation. The TIP revisions include the addition of a source registration program for new and existing sources, a minor NSR permitting program, and provisions to obtain a potential to emit limit to

render a source non-major for new and existing sources. The revisions also outline a process by which the Mohegan Tribe can establish permit by rules, and the Tribe has adopted one permit by rule into its body of regulations for gasoline dispensing facilities as part of these revisions.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Mohegan Tribe's Resolution No. 2022-31, which incorporates Article XIII-A and establishes a minor NSR preconstruction permitting program and allows for sources that would otherwise be major to take restrictions on their potential to emit to below major source thresholds, as described in the amendments to 40 CFR part 49 set forth below. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by EPA for inclusion in the TIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the TIP compilation.¹

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a TIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing TIP submissions, EPA's role is to approve a Tribe's choices, provided that they meet the criteria of the

¹ 62 FR27968 (May 22, 1997).

Clean Air Act. Accordingly, this action merely approves tribal law as meeting Federal requirements and does not impose additional requirements beyond those imposed by tribal law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days after date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 49

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 17, 2023.

David Cash,
Regional Administrator,
EPA Region 1.

Part 49 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 49 – INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

1. The authority citation for part 49 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart D – Implementation Plans for Tribes – Region 1

2. Section 49.201 is amended by revising paragraph (c) to read as follows:

§ 49.201 Identification of plan.

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(c) *EPA-approved regulations.*

EPA-Approved Mohegan Tribe of Indians of Connecticut Regulations

Tribal Citation	Title/Subject	Tribal Effective Date	EPA Approval Date	Explanations
Memorandum of Agreement	Memorandum of Agreement dated December 26, 2006, between the Mohegan Tribe of Indians of Connecticut and the U.S. Environmental Protection Agency Region I	12/26/06	11/14/07, 72 FR 63988	
Mohegan Tribal Resolution No. 2009-28	Approval of Amended Tribal Air Program Area Wide NO _x Emission Limitation Regulation	02/18/2009	09/29/09, 74 FR 49327	Mohegan Tribal Resolution 2009-28 includes the “Area Wide NO _x Emission Limitation Regulation.”
Mohegan Tribal Gaming Authority Resolution MTGA 2009-07	Confirmation and Approval of Amended Tribal Air Program “Area Wide NO _x Emission Limitation Regulation.”	2/18/2009	09/29/09, 74 FR 49327	

Mohegan Tribal Resolution No. 2022-31	Article XIII-A. Minor New Source Review Program	04/06/2022	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	The TIP revision includes the addition of a source registration program, a minor NSR permitting program, provisions to obtain a potential to emit limit to render a source non-major, a process by which the Mohegan Tribe can establish permit by rules, and a permit by rule for gasoline dispensing facilities.
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[FR Doc. 2023-08527 Filed: 4/24/2023 8:45 am; Publication Date: 4/25/2023]